A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.380 of 2003

Mst. Charki and others

versus

Manaram and others

JUDGMENT

Post for 23-04-2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.380 of 2003

Appellants Defendants

1. Mst. Charki, d/o Late Ranglal, age 23 years, Caste-Kanwar
2. Bhuili, d/o Late Ranglal Kanwar, age 18 years
3. Birajo, wd/o Agarsay Kanwar, age 35 years
4. Dhansay, s/o Daula, age 60 years (Dead)
5. Dashmet, wd/o Geda, age 50 years
6. Bulcha, s/o Geda, age 40 years
7. Rajkumari, d/o Geda, age 30 years
8. Dharmpal, s/o Geda, age 25 years
9. Mst. Bhagmen, wd/o Dhansay, age 40 years
10. Shivdhan, s/o Dhansay, age 40 years
11. Sukhlu, s/o Ramcharan Kanwar, age 30 years
12. Dhasraso d/o Late Kariya Bargah, age 60 years.
13. Tilaso d/o Late Kariya Bargah, age 40 years
14. Kaushilya d/o Late Kariya Bargah, age 36 years

All r/o village Kaskela, P.S. Jainagar, Tehsil Surajpur, Distt. Surguja, C.G.

versus

Respondents

1. Manaram s/o Shobha Labna, age 55 years
2. Surja s/o Bhasin Labna, age 19 years

All r/o village Kaskela, P.S. Jainagar, Tehsil Surajpur, Distt. Surguja, C.G.

(PLAINTIFFS)

3. Kapil, s/o Jamalu, age 30 years, r/o village Kaskela, P.S. Jainagar, Tehsil Surajpur, Distt. Surguja, C.G.

(DFD. NO. 12)

4. The State of Chhattisgarh, through Collector, Surguja, Ambikapur

(PROFORMA DEFENDANT)

Second Appeal under Section 100 of the Code of Civil Procedure

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Present : Appellants by Shri A.K.Prasad, learned counsel.
Respondents No.1 & 2 by Shri Sanjay S. Agrawal, learned counsel.
Respondent No.4/State by Shri Akhil Agrawal, learned Panel Lawyer.

JUDGMENT

(Delivered on this 23rd day of April, 2007)

Being aggrieved by the judgment and decree dated 01.04.2003 passed in Civil Appeal No.3-A/2001 by the Ist Additional District Judge, Surajpur affirming the judgment and decree dated 8.12.2000 passed by the Civil Judge Class-I, Surajpur in Civil Suit No.88-A/94, whereby the plaintiffs' suit for declaration of title and possession of the suit land was decreed, the appellants/defendants have preferred this second appeal.

(2) The appeal is admitted on the following substantial question of law :-

> "Whether the finding recorded by the 1st Appellate Court that for not bringing the legal representatives of the deceased/defendants Mahendru and Deosay on record, the suit abated only against the deceased/defendant and not as a whole, is contrary to law?"

(3) Brief facts are that in 1959, the ancestors of the respondents/plaintiffs had entrusted the suit lands to one Kariya on *Adhiya* basis. In the year 1962, when the respondents/plaintiffs demanded the *Adhiya* crop, Kariya informed that the suit lands were

forcibly occupied by the appellants/defendants herein and who also got their names mutated thereon. Instead of filing separate suit against each trespasser, the plaintiffs joined all causes of action in one suit for declaration of title and possession.

(4) The appellants/defendants resisted the suit *inter alia* on the ground of adverse possession.

(5) Both the Courts below have negatived the plea of adverse possession taken by the defendants and granted the relief for declaration of title and possession in favour of the respondents/plaintiffs.

(6) Defendants Mahendru and Deosay had died during the pendency of suit in the trial Court. Their legal representatives were not brought on record. Both the Courts below have held that the suit abated only against the deceased defendants Mahendru and Deosay and not as a whole.

(7) The only point urged by Shri A.K.Prasad, learned counsel for the appellants/defendants in second appeal is that the decree passed against the appellants/defendants, being joint and inseverable, the suit had abated as a whole for not brining the legal representatives of the deceased defendants Mahendru and Deosay on record. Reliance was placed on ***Badni (dead) by LRs. and others etc. etc.*** **vs.** ***Siri Chand (dead) by LRs. and others,*** **AIR 1999 SC 1077,** ***Ramagya Prasad Gupta and others, Brahmadeo Prasad Gupta and another*** **vs.** ***Murli Prasad and others,*** **AIR 1972 SC 1181,** ***State of Madhya Pradesh*** **vs.** ***Ismile and others,*** **1988 MPLJ 587** and ***Dinabandhu Behera and***

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others **vs.** ***Kalandi Charan Mishra and another,*** **AIR 1995 Orissa 237.**

(8) On the other hand, Shri Sanjay S. Agrawal, learned counsel for the respondents/plaintiffs argued in support of the impugned judgment and decree. While contending that under Order 1 Rule 3 of the Code of Civil Procedure, the plaintiffs, while filing a suit for declaration of title and possession, were within their right to join all causes of action against the defendants, who were in unauthorized possession of the suit land as trespassers. Therefore, in the event of death of the defendants Mahendru and Deosay, the suit would abate only against the deceased defendants Mahendru and Deosay and not as a whole because the decree, though jointly passed, was severable and separable and in substance and reality a combination of many decrees. It was contended that in such a situation there was no impediment for proceedings being carried on against the defendants other than deceased defendants Mahendru and Deosay and, therefore, the finding recorded by the 1st Appellate Court is impeccable that the suit abated only against deceased defendants Mahendru and Deosay for not bringing their legal representatives on record and not as a whole. Reliance was placed on ***N. Khosla*** **vs.** ***Rajlakshmi (dead) and others,*** **(2006) 3 SCC 605** and ***S. Amarjit Singh Kalra (dead) by L.Rs. and others*** **vs.** ***Smt. Pramod Gupta (dead) by L.Rs. and others,*** **AIR 2003 SC 2588.**

(9) Having heard the rival contentions, I have perused the record. Shri A.K. Prasad, learned counsel for the appellants/defendants did not dispute that if the decree was joint and severable, the suit would not

abate as a whole. He strongly contended that the decree, being inseverable and inseparable and based on common issues, failure to bring the legal representatives of the deceased defendants Mahendru and Deosay on record, resulted in abatement of the suit as a whole.

(10) Thus, the crux of the matter, therefore, lies in the question as to whether the decree passed by the learned lower Court was a severable or separable decree, because if it was such a decree then the suit would not abate as a whole, but would abate only against the deceased defendants, whose legal representatives were not brought on record.

(11) In ***N. Khosla*** **vs.** ***Rajlakshmi (dead) and others*** (supra), the Apex Court, while placing reliance on ***S. Amarjit Singh Kalra (dead) by L.Rs. and others*** **vs.** ***Smt. Pramod Gupta (dead) by L.Rs. and others*** (supra), held as under :-

> "As held in *Amarjit Singh Kalra case,* (2003) 3 SCC 272, whether an appeal partially abates on account of the death of one or the other party on either side has to be considered depending upon the fact as to whether the decree obtained is a joint decree or a severable one. In case of a joint and inseverable decree if the appeal abated against one or the other, the same cannot be proceeded with further for or against the remaining parties as well. If otherwise, the decree is a joint and severable or separable one, being in substance and reality a combination of many decrees, there can be no impediment for the proceedings being carried on with among or against those remaining parties other than the deceased. Wherever the plaintiffs or appellants or

petitioners are found to have distinct, separate and independent rights of their own and for the purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, or in the case of the defendants or respondents having similar rights, contesting the claims against them, the decree passed by the court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree."

(12) In ***S. Amarjit Singh Kalra (dead) by L.Rs. and others*** vs. ***Smt. Pramod Gupta (dead) by L.Rs. and others*** (supra), the Apex Court held as under :-

"Where the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the Court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them.

Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings, as under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the Courts concerned and a single judgment or

decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseparable decrees.

The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one.

The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of the entire appeal is not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decree passed in the proceedings vis-à-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other."

(13) Viewed in the light of the Apex Court's decisions, a perusal of the pleadings in the plaint clearly goes to show that the plaintiffs had merely joined all the trespassers in one suit mentioning clearly the details of land in unauthorized possession of the defendants in Schedule A to the

plaint. In this way of the matter, the mere fact that the claims or rights asserted by the plaintiffs against all the defendants were similar or identical in nature, it would not be sufficient in law to treat them as joint claims so as to render the judgment or decree passed thereon a joint or inseverable one. For not bringing the legal representatives of the deceased defendants Mahendru and Deosay on record, the plaintiffs' suit abated only as against them, i.e., it failed relating to the relief claimed by the plaintiffs for declaration of title and possession of the lands against the defendants Mahendru and Deosay, who were alleged to be in unauthorized possession thereof. The judgment and decree passed in the civil suit and affirmed in the first appeal would not suffer the vice of contradictory or inconsistent decrees because the decree passed is capable of enforcement as against the remaining appellants/defendants. In this way of the matter, I concur with the finding recorded by the First Appellate Court that the suit abated only against the deceased defendants Mahendru and Deosay for not bringing their legal representatives on record and not as a whole. The substantial question of law is answered in favour of the respondents/plaintiffs and against the appellants/defendants.

(14) The appeal is accordingly dismissed. There shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge
23-04-2007

Gopal